

Filing a Notice of Appeal

The Montana Supreme Court has adopted revisions to the Rules of Appellate Procedure. Rule 4(2) now requires a notice of appeal to be filed in the office of the Clerk of the Supreme Court. If you are appealing an order of the District Court, your appeal must substantially comply with the attached Form 1, M.R.App.P.

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. _____

JERRY SALAZAR
Appellant,

DA 10-0023

JAN 13 2010

v.
STATE OF MT
Appellee.

NOTICE OF APPEAL
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

NOTICE is given that JERRY SALAZAR the Appellant above-named and who is the (plaintiff/petitioner) in that cause of action filed in the THIRTEENTH Judicial District, in and for the County of YSTIN, as Cause No. 09-1556 hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 16th day of NOV., 2009.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is/is not ☒ subject to the mediation process required by M. R. App. P. If subject to mediation, the money judgment being sought is/is not less than \$5,000.

2. That this appeal ☒ is/is not an appeal from an order certified as final under M. R. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto Exhibit "A."

3. That the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.

4. That all available transcripts of the proceedings in this cause have been/have not been ☒ ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

5. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this 29th day of DEC., 2009.

Jerry Salazar
Appellant

CERTIFICATE OF SERVICE

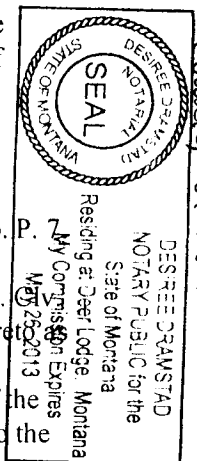
I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of the Clerk of the District Court and each attorney or party served).

Dated this 29th day of DEC., 2009.

CLERK OF DISTRICT COURT
P.O. Box 35026
BILLINGS, MT 59107-5026

SUPREME COURT
P.O. Box 203003
HELENA, MT 59620-3003



State of Montana
County of Nowell

Subscribed & sworn before me this
4th day of January 2010.
Desiree Dranstad
Notary Public for the State of Montana
Residing at Deer Lodge
My Commission Expires May 26, 2013

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7 **MONTANA THIRTEENTH JUDICIAL DISTRICT, YELLOWSTONE COUNTY**

8 JERRY SALAZAR,) Cause No. DV 09-1556
9 Petitioner,) Judge Gregory R. Todd
10 vs.) **ORDER**
11 STATE OF MONTANA,)
12 Respondent.)
13

14 On November 9, 2009, Petitioner Jerry Salazar (Salazar) filed a Petition for
15 Postconviction Relief, Affidavit in Support of said Petition and Memorandum in Support
16 of said Petition. The Memorandum merely cites authority for Salazar's Petition in
17 general with the exception of the last paragraph of each claim. Salazar asserts both his
18 trial counsel and appellate counsel were ineffective. While the third ground of his
19 Petition is that he was given an excessive sentence, the third reason in his
20 Memorandum is the alleged failure of the prosecutor to disclose material evidence.
21

22 Whether the third ground is for failure to disclose exculpatory material by the
23 prosecutor or whether it is an excessive sentence, either rationale will not be heard by
24 this Court in a postconviction relief matter. Salazar pled guilty to both Sexual Assault
25 (Felony) and Bailjumping (Felony). He was sentenced on February 26, 2008, to twenty
years with ten suspended for the Sexual Assault and five years consecutive for the

1 Bailjumping. Salazar appealed to the Montana Supreme Court and the Supreme Court
2 affirmed the sentence and all other matters appealed from by Salazar in citation 2009
3 MT 223N decided on June 30, 2009. Said issues could have been decided or raised on
4 appeal. The length or severity of the sentence is not appropriate for a postconviction
5 matter and can be raised in Sentence Review.
6

7 Salazar has used two different forms for his Petition for Postconviction Relief, but
8 they are both virtually identical. Both Petitions for Postconviction Relief are also virtually
9 identical with his Affidavit in Support of Petition for Postconviction Relief. Whichever
10 Petition or Affidavit is considered, the moving document must meet the criteria of
11 Section 46-21-104(1) which requires that a postconviction relief petition must:

- 12 “(a) Identify the proceeding in which the petitioner was convicted,
13 give the date of the rendition of the final judgment complained of,
14 and clearly set forth the alleged violation or violations;
15 (b) Identify any previous proceedings that the petitioner may
16 have taken to secure relief from the conviction; and
17 (c) Identify all facts supporting the grounds for relief set forth
18 in the petition and have attached affidavits, records, or other
19 evidence establishing the existence of those facts.”

20 In this case, Salazar did identify the proceeding in which he was convicted and give the
21 date of his final judgment. At most he gave a terse outline of any alleged violations.

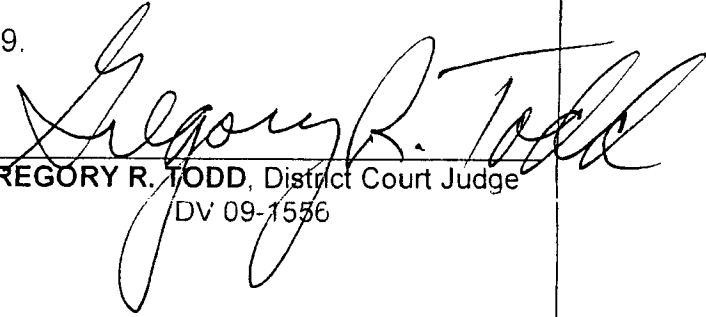
22 Section 46-21-104(1)(a).

23 Salazar completely failed to satisfy the requirements of Section 46-21-104(1)(c)
24 in that he did not provide any facts supporting the grounds for his relief and did not
25 attach any affidavits, records or other evidence seeking to establish the existence of
those facts. Salazar's Petition is a short assertion of alleged deficiencies by his trial and
appellant counsel based entirely upon conclusions without any facts.

1 For all of the above reasons, Salazar has failed to meet the threshold
2 requirements of filing the contents of a petition for postconviction relief pursuant to
3 Section 46-21-104. Therefore,

4 **IT IS HEREBY ORDERED** that the Petition for Postconviction Relief is
5
6 DISMISSED.

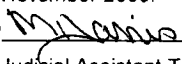
7 DATED this 16th day of November, 2009.

8
9 
HON. GREGORY R. TODD, District Court Judge
DV 09-1556

10
11
12 Cc: ☒ Jerry Salazar, Petitioner
13 YCAO
14

15 CERTIFICATE OF SERVICE

16
17 This is to certify that the foregoing was duly served
18 by U.S. mail or by hand the parties or their attorneys
of record at their last known address this 16th day
of November 2009.

19 By 
20 Judicial Assistant To Hon. Gregory R. Todd
21
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of the foregoing... by depositing said copies into the U.S. mail, postage prepaid, addressed to the following:

Dated this 29th day of Dec. 2009

Gerry Salazar
Signature

Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Montana Supreme Court
P.O. Box 203003
Helena, MT 59620-3003

District/County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Clerk of District Court
P.O. Box 35026
Billings, MT 59107-5026